

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JAMES JOSEPH JULUKE, JR.
Plaintiff,

VS.

NO. 3:14-cv-003266-N

AMREIT PRESTON ROYAL, LP
Defendant

DEFENDANT'S ORIGINAL ANSWER

TO THE HONORABLE DAVID C. GODBEY, UNITED STATES DISTRICT JUDGE:

Comes now AmREIT Preston Royal, LP, Defendant, and files its Original Answer to the Plaintiff's complaint, and respectfully represents:

JURISDICTION AND PARTIES

1. Defendant admits that this court has jurisdiction of the Plaintiff's complaint pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 12181, et seq.

2. Defendant admits that venue is proper in this court pursuant to 28 U.S.C. § 13191(b).

3. Defendant is without knowledge as to the allegations contained in Paragraph 3.

4. Defendant is without knowledge as to the allegations contained in Paragraph 4.

5. Defendant is without knowledge as to the allegations contained in Paragraph 5.

6. Defendant admits the allegations contained in Paragraph 6.

7. Defendant is without knowledge as to the allegations contained in Paragraph 6.

**COUNT I
ALLEGED VIOLATION OF TILE III OF THE ADA**

8. Defendant admits and denies the allegations contained in Paragraph 8 in the same respect as to Paragraphs 1 through 7 above.

9. Defendant admits the allegations contained in Paragraph 9.

10. Defendant is without knowledge as to the allegations contained in Paragraph 10.

11. Defendant is without knowledge concerning whether Mr. Juluke visited the property. Defendant denies that, if he did, Mr. Juluke experienced difficulty accessing the goods and utilizing the services therein due to any architectural barriers.

12. Defendant is without knowledge as to whether Mr. Juluke continues to desire to visit the property or what fears he may have. Defendant denies that, if Mr. Juluke visits the property, that he will encounter any serious difficulty and safety hazard due to the barriers discussed in his complaint.

13. Defendant denies the allegations contained in Paragraph 13.

14. Defendant denies the allegations contained in Paragraph 14.

15. Defendant denies the allegations contained in Paragraph 15.

16. Defendant is without knowledge as to the allegations contained in Paragraph 16.

17. Defendant denies the allegations contained in Paragraph 17.

18. Defendant denies the allegations contained in Paragraph 18.

19. Defendant denies the allegations contained in Paragraph 19.

COUNT II
ALLEGED VIOLATION OF CHAPTER 121
OF THE TEXAS HUMAN RIGHTS CODE

20. Defendant admits and denies the allegations contained in Paragraph 20 in the same respect as to Paragraphs 1 through 19 above.

21. There is no Paragraph 21 contained in the Plaintiff's complaint and no admission or denial is required.

22. Defendant admits that the Tex. Hum. Res. Code Ann. § 121.001, et seq. is the law of the State of Texas. Otherwise, Defendant denies the remaining allegations contained in Paragraph 22.

23. Defendant admits that Chapter 121.003(d)(1) of the Tex. Hum. Res. Code Ann. is the law of the State of Texas. Otherwise Defendant denies the remaining allegations contained in Paragraph 23.

24. Defendant admits that Chapter 121.004(b) of Tex. Hum. Res. Code Ann. is the law of the State of Texas. Otherwise, Defendant denies the allegations contained in Paragraph 24.

25. Defendant denies the allegations contained in Paragraph 25.

GENERAL DENIAL

26. Save as hereinabove admitted, Defendant denies each and every allegation and prayer of the Plaintiff's complaint.

DEFENSES

27. Plaintiff does not have standing to bring this suit.

28. Plaintiff's complaint fails to state a claim upon which relief may be granted.

29. Plaintiff's complaint demands modifications to the property that are structurally impractical, technically infeasible, or are not required.

30. Plaintiff's complaint demands modifications to the property that would threaten the health and safety of customers of the tenants and other persons visiting or shopping at the property, and others.

31. Before the filing of the Plaintiff's complaint, Defendant had already implemented the removal of any existing barriers pursuant to 28 CFR § 36.304. Therefore, Plaintiff is not entitled to an injunction or attorneys fees.

32. Plaintiff's complaint demands modifications to the property that would require Defendant to fundamentally alter the way it provides its goods and services.

33. To the extent that any architectural barriers exist, they are merely technical violations within conventional industry tolerances and the property, when taken as a whole, is complaint with the ADA and its implementing regulations.

34. To the extent that any architectural barriers exist, they have already been amended or removed and the issues are moot and the property is complaint with the ADA and its implementing regulations.

ATTORNEYS FEES

35. The Plaintiff's complaint is without merit, and Defendant is therefore entitled to recover its reasonable attorneys fees and costs of defending this case pursuant to 28 U.S.C. § 1927 and 42 U.S.C. § 12205, and the Texas Human Rights Code.

PRAYER

Wherefore, premises considered, Defendant AmREIT Preston Royal, LP prays that the Plaintiff take nothing by his complaint, that the Plaintiff's complaint be in all things denied, and that the Defendant recover from the Plaintiff Defendant's reasonable and necessary attorney's fees and costs for defending this suit.

Respectfully submitted,



John Mayer
Texas Bar No. 13274500
James V. Lombardi, III
Texas Bar No. 00789779
Ross, Banks, May, Cron & Cavin, P.c.
2 Riverway, Suite 700
Houston, Texas 77056
Phone 713-626-1200
Fax 713-623-6014
Email jmayer@rossbanks.com
Email jlombardi@rossbanks.com

And

R. Spencer Shytles
Texas Bar Number 18335900
Graham, Bright & Smith
5420 LBJ Freeway, suite 200
Dallas, Texas 75240
Phone 972-788-5300
Fax 972-770-2156
Email rss@gbstxlaw.com

Attorneys for Defendant
AmREIT Preston Royal, LP

CERTIFICATE OF SERVICE

I certify that I served true copies of this answer upon the Plaintiff by delivering to the Plaintiff's attorneys electronically by means of the Court's CM/ECF system and also by direct email to the Plaintiff's attorneys of record to the following email addresses:

Louis I. Mussman E-mail Louis@KuMussman.com
Ku & Mussman, P.A.

Seth P. Crosland E-mail seth@scrosland.com
Crosland Law Firm

This service was completed on October 3, 2014.



John Mayer